

रजिस्टर्ड नॉ १०० ६७



राजपत्र, हिमाचल प्रदेश (असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, मंगलवार, २३ जुलाई, १९६८/१ श्रावण, १९६०

GOVERNMENT OF HIMACHAL PRADESH

VIDHAN SABHA SECRETARIAT

NOTIFICATION

Simla-4, the 15th July, 1968

No. 1-44/68-VS.—In pursuance of Rule 135 of the Rules of Procedure and Conduct of Business of the Himachal Pradesh Legislative

Assembly, 1964, the Himachal Pradesh Road Side Land Control Bill, 1968 (Bill No. 35 of 1968) as introduced in the Legislative Assembly on the 15th July, 1968 is hereby published in the Himachal Pradesh Government Gazette.

SURENDRANATH,
Under Secretary.

THE HIMACHAL PRADESH ROADSIDE LAND CONTROL

BILL, 1968

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

A

BILL

to prevent haphazard and sub-standard development along scheduled roads and in controlled areas in Himachal Pradesh.

Be it enacted by the Legislative Assembly of Himachal Pradesh in the Nineteenth Year of the Republic of India as follows:—

1. (1) This Act may be called the Himachal Pradesh Roadside Land Control Act, 1968.

Short title,
extent and
commenc-
ement.

(2) It shall extend to the whole of Himachal Pradesh.

(3) It shall come into force at once.

2. In this Act, unless there is anything repugnant in the subject or context—

Definitions.

(1) “agriculture” includes horticulture, dairy farming, poultry farming and the planting and upkeep of an orchard;

(2) “building” means a house, hut, shed or other roofed structure for whatever purpose or of whatsoever material constructed, and every part thereof, and includes a wall or masonry platform or masonry ditch or drain, but does not include a tent or a fence for agricultural purposes;

(3) “Collector” includes any authority appointed by the Government, by notification in the official gazette, to perform all or any of the functions of the Collector under this Act;

(4) “place of worship” includes a temple, church, mosque, *imambara*, *taquia*, *idgah*, *samadhi*, *math*, *sati*;

(5) “prescribed” means prescribed by rules made under this Act;

(6) “road” means a road maintained by the Government or any local authority or a route demarcated by the Government or a local authority with a view to constructing along it a road;

(7) “controlled area” means an area declared as such under section 3;

(8) “Financial Commissioner” means Financial Commissioner of Himachal Pradesh and includes any person for the time being appointed by the Government, by notification, to exercise and perform all or any of the powers and functions of the Financial Commissioner under this Act and the rules made thereunder;

(9) “Government” or “State Government” means the Government of Himachal Pradesh;

(10) “scheduled road” means a road declared as such by the Government under section 3; and

(11) “official Gazette” means the *Rajpatra*, Himachal Pradesh.

Declaration of scheduled road and controlled area.

3. (1) The Government may, by notification, in the official gazette declare any length or the whole of any road to be a "scheduled road" and the area upto a horizontal distance of five metres from the edge of the road-land on either side of such scheduled road to be a "controlled area".

(2) Not less than three months before making a declaration under sub-section (1), the Government shall cause to be published in the official gazette and in at least two newspapers printed in a language other than English, a notification stating that it proposes to make such a declaration and specifying broadly the boundaries of the land in respect of which the declaration is proposed to be made and copies of every such notification or of the substance thereof shall be published by the Collector in such manner as he thinks fit at his office and at such other places as he considers necessary within the said boundaries.

(3) Any person interested in any land included within the boundaries mentioned in sub-section (1), may, at any time before the expiration of 60 days from the last date on which a copy of such notification is published by the Collector, object to the making of the declaration or to the inclusion of his land or any part of it within the said boundaries.

(4) Every objection under sub-section (3) shall be made to the Collector in writing, and the Collector shall give to every person so objecting an opportunity of being heard either in person or through a legal practitioner, and shall, after all such objections have been heard and after such further enquiry, if any, as he thinks necessary, forward to the Government the record of the proceedings held by him together with a report setting forth his recommendations on the objections.

(5) If before the expiration of the time allowed by sub-section (3) for the filing of objections, no objection has been made, the Government may proceed at once to the making of a declaration under sub-section (1). If any such objections have been made, the Government shall consider the record and the report referred to in sub-section (4) and may either,—

(a) abandon the proposal to make a declaration under sub-section (1), or
 (b) make such a declaration in respect of either the whole or part of the land included within the boundaries specified in the notification under sub-section (2).

(6) For the purposes of sub-section (3), a person shall be deemed to be interested in land if he is a "person interested" as defined in clause (b) of section 3 of the Land Acquisition Act, 1894, for the purposes of that Act or where the land is occupied by or for the purposes of a place of worship, tomb, cenotaph, graveyard, grave or *marghat* if he is a member of the faith to which such building pertains.

(7) A declaration made under sub-section (1) shall, unless and until it is withdrawn, be conclusive evidence of the fact that the road to which it relates is a scheduled road and the area to which it relates is a controlled area.

4. (1) The Collector shall deposit at his office and at such other places as he considers necessary, plans showing the alignment of roads declared to be scheduled for the purposes of this Act, and setting forth the nature of the restrictions applicable to the land within five metres on their either side.

(2) The plans so deposited shall be available to the public for inspection free of charge at all reasonable times.

(3) Provision may be made by rules made in this behalf with respect to the form and contents of the plans and with respect to the procedure to be followed and any other matter in connection with the objections thereto.

(4) The Collector may authorise any person to enter into or upon any land and building with or without assistants or workmen for the purpose of making an enquiry, inspection, measurement or survey or taking levels:

Provided that no entry shall be made except between the hours of sunrise and sunset and without giving twenty four hours' notice to the occupier or owner of such land or building.

5. Notwithstanding anything contained in any other law for the time being in force, no person shall erect or re-erect any building or make or extend any excavation or lay out any means of access to a road in a controlled area:

Provided that nothing in this section shall apply—

- (a) to the repair to a building which was in existence immediately before the commencement of this Act or any erection or re-erection of such a building which does not involve any structural alteration or addition therein, or
- (b) the erection or re-erection of a building which was in existence immediately before the commencement of this Act and which involves any structural alteration or addition with the permission of the Collector, or
- (c) the laying out of any means of access to a road with the permission of the Collector, or
- (d) the erection or re-erection of a motor-fuel-filling station or a bus-queue shelter with the permission of the Collector, or
- (e) any construction with the permission of the Collector.

6. (1) Every person desiring to obtain the permission referred to in section 5 shall make an application in writing to the Collector in such form and containing such information in respect of the building, excavation, means of access, motor-fuel-filling station or a bus-queue shelter to which the application relates, as may be prescribed.

(2) On receipt of such application, the Collector after making such enquiry as he considers necessary, shall, by order in writing, either—

- (a) grant the permission, subject to such conditions, if any, as may be specified in the order, or
- (b) refuse to grant such permission.

(3) When the Collector grants permission subject to conditions under clause (a) of sub-section (2) or refuses to grant permission under clause (b) of sub-section (2), the conditions imposed or the grounds of refusal shall be such as are reasonable having regard to the circumstances of each case.

(4) The Collector shall maintain a register with sufficient particulars of all permissions given by him under this section and the register shall be available for inspection without charge by all persons interested and such persons shall be entitled to take extracts therefrom..

7. (1) Any person aggrieved by an order of the Collector under sub-section (2) of section 6 granting permission subject to conditions or refusing permission may, within thirty days from the date of such order, prefer an appeal to the Financial Commissioner.

(2) The order of the Financial Commissioner on appeal shall be final.

Restrictions
on build-
ings etc. in
a controlled
area.

Application
for permis-
sion to
build etc.
and grant
or refusal
of such
permission.

Right of
appeal.

Compensa-
tion.

8. (1) No person shall be entitled to claim compensation under this or any other Act for any injury, damage or loss caused or alleged to have been caused by an order,—

- (a) refusing permission to make or extend an excavation, or granting such permission but imposing conditions on the grant, or
- (b) refusing permission to lay out a means of access to a road, or granting such permission but imposing conditions on the grant, or
- (c) granting permission to erect or re-erect a building but imposing conditions on the grant, or
- (d) granting any other permission for the controlled area but imposing conditions on the grant.

(2) When an order has been made refusing permission to erect or re-erect a building, any person who has exercised the right of appeal given by sub-section (1) of section 7 may, within three months of the date of the order of Financial Commissioner, make to the Financial Commissioner a claim for compensation on the ground that his interest in the land concerned is injuriously affected by the said order.

(3) On receipt of a claim under sub-section (2), the Financial Commissioner shall either proceed to acquire the land concerned under the Land Acquisition Act, 1894, or transfer the claim for disposal to an officer exercising the powers of Collector under the said Act:

Provided that in case the Financial Commissioner decides to acquire the land,—

(i) it shall not be necessary for land occupied by a place of worship, tomb, cenotaph, graveyard, grave or *marghat* to be included, and

(ii) the claimant shall be entitled to be repaid by the acquiring authority the amount of expenses which he may have properly incurred in connection with the preparation and submission of his claim for compensation under this section, and in default of agreement, such an amount shall be determined by the authority deciding the value of the land in the proceedings under the Land Acquisition Act, 1894.

1 of 1894

1 of 1894

(4) Nothing in this section shall be deemed to preclude the settlement of a claim by mutual agreement.

Amount of
compensa-
tion how
determin-
ed.

9. (1) When a claim is transferred for disposal under section 8 to an officer exercising the powers of a Collector under the Land Acquisition Act, 1894, such officer shall make an award determining the amount of compensation, if any, payable to the claimant.

(2) The amount of compensation awarded under sub-section (1) shall, in no case, exceed the difference between the market value of the land in the existing conditions having regard to the restrictions actually imposed upon its use and development by the order refusing permission to erect or re-erect a building thereon and market value immediately before the publication under sub-section (2) of section 3 of the notification in pursuance of which the area in which it is situated was declared to be a controlled area. And no compensation shall be awarded under sub-section (1),—

- (i) unless the claimant satisfies the officer making the award that proposals for the development of the land which at the date of the application under sub-section (1) of section 6 are immediately practicable, or would have been so, if this Act had not been passed, are prevented or injuriously affected by the restrictions imposed under this Act, or

1 of 1894

- (ii) if and in so far as the land is subject to substantially similar restrictions in force under some other enactment which were so in force at the date when the restrictions were imposed under this Act, or
- (iii) if compensation in respect of the same restrictions in force under this Act or of substantially similar restrictions in force under some other enactment has already been paid in respect of the land to the claimant or to any predecessor in interest of the claimant.

(3) The provisions of Parts III, IV, V and VIII of the Land Acquisition Act, 1894 shall, so far as may be, applied to an award made under sub-section (1) as though it were an award made under that Act.

10. Nothing in this Act shall affect the power of the Government or any other authority to acquire land or to impose restrictions upon the use and development of land comprised in the controlled area under any other enactment for the time being in force, or to permit the settlement of a claim arising out of the exercise of powers under this Act by mutual agreement.

11. (1) Notwithstanding anything contained in any other law for the time being in force, no land within a controlled area shall be used for the purposes of a charcoal-kiln, pottery-kiln or lime-kiln, stone quarry or slate quarry and no land within a controlled area shall be used for the purposes of a brick-field or brick-kiln except under, and in accordance with the conditions of, a licence from the Collector which shall be renewable annually.

(2) The Government may charge such fees for the grant and renewal of such licence and may impose such conditions in respect thereof as may be prescribed.

(3) No person shall be entitled to claim compensation under this or any other Act for any injury, damage or loss caused or alleged to have been caused by the refusal of a licence under sub-section (1).

12. (1) Any person who,—

(a) erects or re-erects any building or makes or extends any excavation or lays out any means of access to a road in contravention of the provisions of section 5 or in contravention of any conditions imposed by an order under section 6 or section 7;

(b) uses any land in contravention of the provisions of sub-section (1) of section 11 shall be punishable with fine which may extend to five hundred rupees, and, in the case of a continuing contravention, with a further fine which may extend to fifty rupees for every day after the date of the first conviction during which he is proved to have persisted in the contravention.

(2) Without prejudice to the provisions of sub-section (1), the Collector may order any person who has committed a breach of the provisions referred to in the said sub-section to restore to its original state or to bring into conformity with the conditions which have been violated, as the case may be, any building or land in respect of which a contravention, such as is described in the said sub-section, has been committed and if such person fails to do so within three months of the order, may himself take such measures as may appear to him to be necessary to give effect to the order and the cost of such measures shall, if not paid on demand being made to him, be recoverable from such person as an arrear of land revenue.

1 of 1894

Saving for other enactments.

Prohibition of use of any land as a brick-field etc. without licence.

Offences and penalties.

Offences by companies.

13. (1) Where an offence under this Act has been committed by a company, the company as well as every person in-charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

- (a) “company” means any body corporate and includes a firm or other association of individuals, and
- (b) “director” in relation to a firm means a partner in the firm.

Composition of offences.

14. (1) The Collector or any person authorised by the Collector, by general or special order, in this behalf, may, either before or after the institution of the proceedings, compound any offence made punishable by or under this Act.

(2) Where an offence has been compounded, the offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of the offence compounded.

Trial of offences and special provision regarding fine.

15. (1) No court inferior to that of a Magistrate of the first class shall be competent to try any offence punishable under this Act.

(2) Notwithstanding anything contained in section 32 of Code of Criminal Procedure, 1898, it shall be lawful for any Magistrate of the first class to pass a sentence of fine exceeding the pecuniary limit specified in that section as in force in any part of Himachal Pradesh on any person convicted of an offence punishable under this Act.

Bar to legal proceedings.

16. (1) No suit, prosecution or other legal proceedings shall lie against any person in respect of anything which is in good faith done or intended to be done in pursuance of this Act or the rules made thereunder.

(2) No suit or other legal proceedings shall lie against the Government for any damage caused by anything which is in good faith done or intended to be done in pursuance of this Act or the rules made thereunder.

Savings.

17. (1) Nothing in this Act shall apply to,—

(a) the erection or re-erection of building upon land included in the inhabited site of any village as entered and demarcated in the revenue records or upon sites in a municipal, notified or town area that are already built up on the date of the issue of the notification under sub-section (2) of section 3 of this Act;

(b) the erection or re-erection of a place of worship or a tomb, cenotaph, grave, graveyard or *marghat* or of a wall enclosing a place of worship, tomb, cenotaph, grave, graveyard or *marghat* or land which is, at the time a notification under sub-section (2) of section 3 is published by the Government, occupied by or for the

purposes of such place of worship, tomb, cenotaph, grave, graveyard or *marghat*;

- (c) excavations (including wells) made in the ordinary course of agricultural operations, soil conservation and hill stabilisation;
- (d) the construction of an unmetalled road intended to give access to land solely for agricultural purposes.

18. (1) The Government may make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the form in which applications and plans under sub-section (1) of section 6 shall be made and the information to be furnished in such applications;
- (b) principles according to which applications under sub-section (1) of section 6 shall normally be allowed or disallowed by the Collector;
- (c) the regulation of the laying out of means of access to roads;
- (d) the fees to be charged for the grant and renewal of licences under section 11 and the conditions governing such licences;
- (e) the principles and conditions under which applications for permission or licence under this Act may be granted or refused;
- (f) the form and manner in which the register referred to in sub-section (4) of section 6 shall be maintained;
- (g) the procedure to be followed in hearing appeals under section 7, the fees to be paid in respect of, and the documents, which shall accompany, such appeals ; and
- (h) any other matter which may be prescribed.

(3) All rules made under this section shall be subject to the condition of previous publication.

(4) All rules made under this section shall be laid before the Legislative Assembly as soon as may be after they are made.

19. No civil court shall have any jurisdiction to entertain or decide any question relating to matters falling under this Act or the rules made thereunder.

10 of 1945 20. The United Provinces Roadside Land Control Act, 1945, as applicable to the areas comprised in Himachal Pradesh immediately before 1st November, 1966, and the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963, as in force in the areas added to Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966, are hereby repealed:

41 of 1963

31 of 1966

Provided that anything done or any action taken or any proceedings commenced or continued under the said Acts shall be deemed to have been done, taken or continued under the corresponding provision of this Act.

Power to make rules.

Bar of jurisdiction of civil courts.

Repeal and savings.

STATEMENT OF OBJECTS AND REASONS

At present in the old areas of Himachal Pradesh, the United Provinces Roadside Land Control Act, 1945 is in force, whereas in the merged areas, the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 is prevalent. In order to have uniformity in respect of control on the construction of structures and ribbon development along roads, it is proposed to have uniform law for the whole of Himachal Pradesh and this Bill seeks to achieve the aforesaid object.

SIMLA:
The 15th July, 1968.

KARAM SINGH,
Finance Minister.

FINANCIAL MEMORANDUM

Nil

MEMORANDUM ON DELEGATED LEGISLATION

Clause 18 empowers the Government to make rules in respect of the matters mentioned therein. These rules shall be made after previous publication, and shall be laid before the Legislative Assembly as soon as may be after they are made.